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December 27, 2019

VIA ECF

Honorable Judge A. Kathleen Tomlinson
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: Brown v. Walmart Inc., 2:19-cv-00569 (JS) (AKT)

Dear Magistrate Judge Tomlinson:

This is filed on behalf of Walmart Inc. in response to the letter motion filed December 20, 2019 by Plaintiff Jasmine Brown ("Motion") in response to Defendant's letter motion for a pre-motion conference in anticipation of filing a motion to dismiss the Complaint. This matter was referred to Your Honor by Judge Seybert's December 20, 2019 Order. As a result of the deficiencies of Plaintiff's Motion, Defendant requests that it be denied or, if it is not now denied, that Defendant be given sufficient time to respond after Plaintiff has submitted and served the proposed amended complaint.

Plaintiff's Motion does not give Defendant an opportunity to respond fully to its merits. As Plaintiff acknowledges in her Motion, which improperly responded to Defendant's letter motion and was not discussed beforehand with Defendant, she fails to include a redline (or a clean) version of the proposed amended complaint in accordance with Judge Seybert's Individual Rules. Without a redline, there is no way for Defendant to respond fully as to whether the proposed amendment would cause undue delay or prejudice, is the result of dilatory motive, or is futile in that it would not cure the deficiencies in Plaintiff's current Complaint or otherwise be sufficient to state a claim. For these reasons alone the motion should be denied.

In addition, to the extent the Motion gives any indication of any content of the proposed amendment, it does not support allowing the amendment. First, Plaintiff states that the Motion will plead "scientific testing as to the amount of honey contained in the Products." Dkt. No. 31. In other

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words, Plaintiff wants to plead evidence. This is inconsistent with Fed. R. Civ. P. 8 and does not cure any of the deficiencies of the current complaint, as described in Defendant's letter motion. Dkt. No. 30.

The Motion also seeks leave to amend to replace the current individual plaintiff, Jasmine Brown, with a different unidentified person as the plaintiff. Again, without information as to the reason for this substitution or regarding the unidentified replacement plaintiff (*e.g.* does he or she interpret the allegedly misleading packaging in the same way as Ms. Brown), Defendant cannot determine all of the deficiencies in, or otherwise respond to, the proposal for a new pleading.

For the foregoing reasons, Defendant respectfully submits that Plaintiff's Motion should be denied and, if it is not denied, requests that Defendant be given time after the submission and service of the proposed amended complaint to respond to the Motion.

Respectfully submitted,

/s/Jaclyne D. Wallace
Jaclyne D. Wallace

cc: All Counsel of Record (via ECF)